

**Letter of Findings: 01-20200281
Indiana Individual Income Tax
For the Tax Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals were responsible for additional Indiana income tax for the 2019 tax year because, after a cross-reference examination with the Department's withholding tax records, the records reflected that Individuals overstated their county withholding tax credits. Individuals had Ohio local income tax withheld and pursuant to Information Bulletin 28, they need to request that refund with Ohio.

ISSUE

I. Indiana Individual Income Tax - County Withholding Tax Credits.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-3; IC § 6-8.1-5-1; IC § 6-8.1-5-2; [45 IAC 3.1-1-76](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 28 (November 2016).

Taxpayers protest the Department's individual income tax assessment for 2019.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are Indiana residents. Husband works for an employer in Ohio. Taxpayers timely filed their IT-40 return for 2019 ("Tax Year at Issue"). The Indiana Department of Revenue ("Department") processed their return and adjusted their local withholdings to reflect Indiana withholdings requirements.

Taxpayers protested the assessment, submitting additional documentation - including copies of their W-2 statements. Taxpayers requested that the Department make its final determination without a hearing. This Letter of Findings ensues based on Taxpayers' documents and information available within the Department's records. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - County Withholding Tax Credits.

DISCUSSION

After cross-referencing the Department's records and examining Taxpayers' filings for the Tax Year at Issue, the Department determined that Taxpayers owed additional income tax based on their IT-40 returns for the Tax Year at Issue. The Department thus made "line-by-line" adjustments and assessed Taxpayers additional income tax, penalty, and interest pursuant to IC § 6-8.1-5-2.

Taxpayers disagreed. In their, protest letter, Taxpayers asserted, in relevant part, that:

[Husband] work[s] in Ohio and ha[s] to pay local taxes there, and the tax software [Husband] used reported that amount in IT-40 Schedule 5 Line 2 (Indiana County tax withhold). This amount should've been reported under IT-40 Schedule 6 Line 1 (Credit for local taxes paid outside Indiana).

Taxpayers then submitted the changes that should be made to reflect their protest and also provided their W-2. The issue thus is whether Taxpayers demonstrated that they correctly filed their Indiana IT-40 return for the Tax

Year at Issue and that the assessment was wrong.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To efficiently and effectively compute what is considered the resident-taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

In addition, Indiana has entered reciprocal agreements with several states. Under the agreed reciprocity, Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Ohio,] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not apply and automatically transfer the withholding tax credits between reciprocal states. Specifically, the same regulation provides, "**Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.**" *Id.* (Emphasis added).

Indiana law also permits Indiana resident-taxpayers to claim an income tax credit - not exceeding their Indiana income tax due - for the taxes he or she is required to pay to other states. IC § 6-3-3-3(a). Similarly, when the resident-taxpayer of an Indiana county is required to pay local income tax to a county of another state, the Indiana resident-taxpayer is entitled to a tax credit.

To claim this tax credit, the Department accepts "[w]ithholding statements or other evidence of tax payment . . . if no return is required to be filed with the locality outside Indiana." Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA (explaining further that "[t]he allowable credit is equal to the lesser of: [1] [t]he amount of income tax actually paid to a locality in another state; [2] [t]he amount of adjusted gross income taxed by the locality outside of the State of Indiana multiplied by the county rate to which the taxpayer is subject; or [3] [t]he amount of county tax due on the Indiana return).

Withholding tax credits are refundable while the tax credits for tax paid to other states or counties of other states are nonrefundable. When an Indiana resident-taxpayer who works in a county of another state, which has a reciprocal agreement with Indiana (such as Ohio), the Indiana resident-taxpayer must report his or her W-2 income from Ohio on his or her IT-40 return and vice versa. Only when the employer withholds and remits the withholding taxes to Indiana, is the resident-taxpayer entitled to claim the withholding tax credit on the Schedule 5 of his or her IT-40 return. When the employer fails to do so, the resident-taxpayer has no withholding tax credits for filing IT-40 returns purposes regardless of the source of income. Reciprocity is irrelevant in claiming the withholding tax credits.

The Indiana resident-taxpayer may also claim a tax credit for local income tax paid to a county of another state. Unlike the withholding tax credits on Schedule 5, this tax credit for income tax paid to a county of another state (claimed on the Schedule 6) is not a refundable credit. This tax credit - to the extent of "[t]he amount of county tax due on the Indiana return" - is against their Indiana county income tax owed. That is, if the amount of income tax the resident-taxpayer paid to a county of another state *exceeds* the county income tax he or she would have owed under his or her Indiana return, the resident-taxpayer owes no Indiana county income tax. The resident-taxpayer receives no refund of the overpayment from Indiana on that income even when he or she has paid more tax to the county of another state.

In this instance, pursuant to the reciprocity, Taxpayers, as Indiana residents, were required to file IT-40 returns, reporting Husband's wage income from Ohio and required to report the withholding as if it were Indiana withholding.

As mentioned earlier, these withholding tax credits are state specific. Taxpayers' W-2 statements demonstrated that Husband's Ohio employer withheld and remitted local withholding taxes to Ohio. As mentioned earlier, "[c]redit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries [or] wages [] received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." [45 IAC 3.1-1-76](#). In other words, Indiana did not receive the claimed county withholding tax from Husband's Ohio employer. Therefore, there were no county withholding tax credits available to be claimed on Taxpayers' IT-40 return for 2019. If there is a remedy, it is with Ohio.

Therefore, since Taxpayers claimed the local withholding paid to Ohio as an overpayment on their Indiana income tax return, and since such out-of-state local/county withholding is only allowed to be claimed up to the amount of Indiana county tax which would have been due, Taxpayers overclaimed those out-of-state local/county withholding credits on their Indiana income tax return. In short, given the totality of the circumstances, Taxpayers' supporting documentation failed to demonstrate that the proposed assessments were wrong as required by IC § 6-8.1-5-1(c). The Department correctly adjusted Taxpayers' IT-40 return to comport with the records.

FINDING

Taxpayers' protest is respectfully denied.

December 23, 2020

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